

C. T. asks the Utah Labor Commission to review Administrative Law Judge Poelman's denial of Ms. T.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).¹

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

ISSUE PRESENTED

Although the parties have raised other issues, the Commission finds the following issue dispositive: Should the medical aspects of Ms. T.'s claim be referred to a medical panel?

FINDINGS OF FACT

The material facts surrounding Ms. T.'s claim are admirably set forth in Judge Poelman's decision and will not be repeated in full here. For purposes of determining whether a medical panel referral is necessary, it is sufficient to note that a dispute exists between the medical opinions of the various physicians who have treated and examined Ms. T.. These differences of opinion related to the nature, cause and prognosis Ms. T.'s injury.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-601 of the Act authorizes the Commission to refer the medical aspects of a workers' compensation claim to an independent medical panel. The Commission has promulgated Rule R602-2-2, Utah Administrative Code, to guide the use of medical panels. As applicable to this case, Rule R602-2-2.A provides that "(a) panel will be utilized by the Administrative Law Judge where: 1. One or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. . . ."

With respect to the need to refer this matter to a medical panel, two of Ms. T.'s treating physicians are of the opinion that Ms. T. is suffering from a new injury that was medically caused by her work accident. On the other hand, other physicians have expressed the opinion that Ms. T. suffered a temporary aggravation of a preexisting condition. In view of this conflict among the parties' medical experts, the Commission's Rule R602-2-2 requires appointment of an independent medical panel to evaluate the medical aspects of Ms. T.'s claim. See Willardson v. Industrial Commission, 904 P.2d 671 (Utah 1995) The Commission will therefore remand this matter to the Adjudication Division for that purpose.

The Commission also wishes to address the question of Ms. T.'s submission of new evidence

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Since issuing his decision in this matter, Judge Poelman has retired from Commission service.

as part of her motion for review to the Commission. The Commission expects all parties in formal adjudicative proceedings such as this to submit their evidence at the evidentiary hearing, where it will be subject to examination, objection and rebuttal by other parties. If the Commission were to accept such evidence as part of the review process, it would not only leave the record in a state of flux, but would deprive other parties of their right to due process. Consequently, the Commission will not accept evidence offered for the first time as part of a motion for review. If a party believes it has sufficient justification for submitting evidence after a hearing has been held, the party should request reopening of the evidentiary hearing. The Commission therefore declines to consider the evidence proffered in Ms. T.'s motion for review.

ORDER

The Commission remands this matter to the Adjudication Division for referral to a medical panel and for such other action necessary to resolve Ms. T.'s claim. It is so ordered.

Dated this 25th day of February, 2004.

R. Lee Ellertson, Commissioner